Supreme Court, U.S.
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No. 99-298

In The

Supreme Court of the United States

WILLIAM GUNTER,

Petitioner,

vs.

CITY OF BELLEVIEW, FLORIDA and FLORIDA LEAGUE OF CITIES,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal, First District State Of Florida

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW (RESTATED)

I. WHETHER § 440.15 FLA. STAT. (1994) VIOLATES THE DUE PROCESS, EQUAL ACCESS TO COURTS AND EQUAL PROTECTION OF LAWS PROVISIONS OF THE CONSTITUTION

II. WHETHER § 440.45(2), FLA. STAT. (1994) IS AN UNCONSTITUTIONAL VIOLATION OF SEPARATION OF POWERS

III. WHETHER § 440.13(5)(e) FLA. STAT. (1994) IS UNCONSTITUTIONAL IN ITS RESTRICTION OF MEDICAL TESTIMONY

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BASIS OF JURISDICTION

Petitioner alleges that the Florida Supreme Court no longer has jurisdiction for common law certiorari. However, Florida Rule of Appellate Procedure 9.030(a)(3) entitled, "Original Jurisdiction," states in pertinent part:

> "The Supreme Court may issue writs of prohibition to Courts and all writs necessary to the complete exercise of its jurisdiction . . . "

Respondents the City of Belleview, Florida and the Florida League of Cities further note the concession by counsel for Petitioner Gunter that Petitioner's appeal to the 1st District Court of Appeal for the State of Florida resulted in a unanimous, *per curiam* decision rendered April 12, 1999, unpublished. (Petition, p. 1). Petitioner Gunter also concedes that his Motion for Rehearing to the 1st DCA was denied by Order dated May 4, 1999, also without written opinion and unpublished. Thus there is no appellate opinion for this Honorable Court to review, since no written opinion accompanied either of those decisions by the 1st District Court of Appeal of Florida in this workers' compensation claim and appeal.

Nevertheless, Petitioner alleges this Honorable Court's jurisdiction under 28 U.S.C. § 1257, which Respondents dispute, given the lack of appellate opinions below for this Honorable Court to analyze.

STATEMENT OF THE CASE

Respondents accept the Statement of the Case set forth in the Petition, noting Petitioner Gunter's concession that the 1st District Court of Appeal of Florida unanimously affirmed the Order of the Judge of Compensation Claims without opinion, and similarly denied Petitioner's Motion for Rehearing. (Petition, p. 7).

ARGUMENT

I. WHETHER § 440.15 FLA. STAT. (1994) VIOLATES THE DUE PROCESS, EQUAL ACCESS TO COURTS AND EQUAL PROTECTION OF LAWS PROVISIONS OF THE CONSTITUTION

Each of the Petitioner's three arguments on appeal attack the constitutionality of various amended provisions of Chapter 440, Florida Statutes. The first statute of Florida's workers' compensation laws to be attacked is section 440.15, *Fla. Stats.* (1994). Petitioner Gunter argues that the statute as amended violates the due process, equal access to Court, and equal protection provisions of the Constitution.

Florida's 1st District Court of Appeal has primary appellate jurisdiction over workers' compensation appeals in that state. It has held on multiple occasions that *Fla. Stat.* 440.15 as amended in 1994 does not violate the constitutional right of access to Courts. See, i.e. *Bradley v. Hurricane Restaurant,* 677 So. 2d 162 (Fla. 1st DCA 1996).

The State Legislature has the power to enact workers' compensation laws even *without* specific constitutional authorization provided the constitutional limitations are not violated. The Florida Supreme Court has held that it is within the power of the State Legislature to provide for a workers' compensation system which "supersedes" any other legislation effecting injuries suffered on the job, in an opinion appealed to this Honorable Court. *Mullarkey v. Florida Feed Mills, Inc.*, 268 So. 2d 363 (Fla. 1972), *appeal dismissed*, 411 U.S. 944, 36 L. Ed. 2d 406, 93 S. Ct. (1973).

The Florida Supreme Court has held that the exclusive remedies afforded under the state's workers' compensation laws to those injured on the job are appropriate and in compliance with the requirements of due process and equal protection of the laws. *Hughes v. B.F. Goodrich Co.*, 11 So. 2d 313 (Fla. 1943). The legislative statutes are presumed valid, and Petitioner Gunter has failed to carry the burden of demonstrating otherwise in this Petition.

Florida Courts, like virtually all Courts around the country, have approved the "necessary exchange" inherent in the workers' compensation laws. The employees trade any common law remedy for a " . . . sure, expeditious method of settling claims." *John v. G.D.G. Services, Inc.*, 424 So. 2d 114 (Fla. 1st DCA 1982), *aff'd*, 440 So. 2d 1286 (Fla. 1983).

But Petitioner argues that the amount of benefits provided in *Fla. Stat.* 440.15 (1994) is so diminished that it effectively eliminates the rights of the worker when weighed against the benefit to the employer. Yet Petitioner fails to demonstrate or otherwise prove how the

1994 amendments to *Fla. Stat.* 440.15 cause the benefits to be "effectively eliminated."

Instead, Petitioner simply argues in general terms that the reduction of benefits available somehow abolishes one side of the trade-off that exists in the employer-employee relationship under the workers' compensation statutes. Petitioner gives no grounds for that bald allegation, merely stating generally that the statute somehow destroys the balance of power and shifts the weight so predominantly to the side of the employer that it unconstitutionally denies the employee access to the Courts.

But the employees *are* granted automatic access to the Courts through the workers' compensation system, and have no burden of proof on liability or fault whatsoever. The employer gives up all rights to prove that the majority of work place accidents were the employees' fault in whole or in part. Instead, the employer is responsible for the automatic provision of fully-paid medical treatment and a substantial percentage of the employee's lost income, without regard to fault whatsoever.

The 1994 amendments to Chapter 440, *Florida Statutes,* do not change this fundamental underpinning of the workers' compensation system one iota. Nor does Petitioner Gunter explain in any manner any error in the conclusion by the Judge of Compensation Claims that Petitioner's December 1995 job accident did not result in any permanent physical injury or incapacity. (See, Petitioner's Appendix "D"). Nor does Petitioner Gunter provide any basis to attack the Judge's conclusion that he returned to work with no physical restrictions and thus was not entitled to partial disability benefits thereafter

nor suffered any permanent impairment to entitle him to permanent total disability benefits. (Appendix "D").

Thus Petitioner Gunter argues the unconstitutionality of the 1994 amendments to certain portions of Chapter 440, *Florida Statutes,* in a vacuum. Petitioner's lack of entitlement to benefits was not due to any unconstitutional aspect of the amended statutes, but instead to the clear lack of evidence in support of his claims. His simple inability to prove entitlement to further benefits beyond those already paid under any provision of Chapter 440 eliminates any valid attack on the constitutionality of these statutes that he could attempt to raise.

Even if Petitioner Gunter could argue unconstitutionality with any validity, that argument would fail. The well-reasoned opinions of the Florida Supreme Court and First District Court of Appeal in appeals based on constitutional attacks have reconfirmed the State Legislature's right to create a workers' compensation system which trades employees' potential tort remedies against the employer for no fault, immediate relief for medical bills and lost wages. The Petitioner's argument here is thus made up solely of generalities and form, with no content.

The Florida Supreme Court has previously held that even though an amendment to a provision of Chapter 440 may render an injured employee less eligible for benefits then under a prior version of the State's workers' compensation laws, the amendments still do not violate the right of access to the Courts. *Martinez v. Scanlan,* 582 So. 2d 1167 (Fla. 1991). As long as the workers' compensation laws remain a reasonable alternative to tort litigation, constitutional rights to equal access, equal

protection and due process are not violated. *See also, Mahoney v. Sears, Roebuck & Co.*, 440 So. 2d 1285 (Fla. 1983); *Acton v. Fort Lauderdale Hospital*, 440 So. 2d 1282 (Fla. 1983).

Obviously, the Florida Courts are not unmindful of the constitutional analysis of workers' compensation laws. Petitioner Gunter's arguments, however, attack the original basis for the creation of workers' compensation laws around the country, without any reference to the utter lack of evidentiary support for his workers' compensation claim below. Mr. Gunter was denied further workers' compensation benefits beyond those already paid because there was no evidence in support of his claim, not because any statute in Chapter 440 was unconstitutional in any manner.

Petitioner Gunter should make his arguments to his local state legislator, not to this Honorable Court. The Florida Appellate Courts have upheld the 1994 amendments to the State's workers' compensation laws from constitutional challenge. *Bradley, supra.* Petitioner Gunter urged the Florida Appellate Courts in his case to recede from those decisions and find the statute unconstitutional, without any concrete basis or competent evidence for his request. Lacking such substantive ground for constitutional attack, Petitioner Gunter's demand for this Honorable Court's review and reversal of the opinions of the Florida Appellate Court should be DENIED.

II. WHETHER § 440.45(2), FLA. STAT. (1994) IS AN UNCONSTITUTIONAL VIOLATION OF SEPARATION OF POWERS

On this Point on Appeal, Petitioners baldly argue the unconstitutionality of the Florida Statute authorizing the governor to appoint Judges of Compensation Claims. *Fla. Stat.* 440.45. In the interest of brevity, Respondents will not repeat but reincorporate as if fully set out herein their prior arguments in this brief in response to the baseless constitutional challenges in this appeal.

The Florida Supreme Court previously upheld the constitutionality of the majority of the amended statute, but held unconstitutional only that provision which *eliminated* the governor's right to choose whether to reappoint judges. *Jones v. Lawton Chiles,* 638 So. 2d 48 (Fla. 1994). The Court found that the limited portion of *Fla. Stat.* 440.45(2) that eliminated the governor's choice in the reappointment of a JCC was invalid because it,

> " . . . unconstitutionally encroaches on the power of the governor to appoint executive branch officers." *Id.* at 48.

Since the Judges of Compensation Claims come under the Workers' Compensation Division of the Department of Labor in Florida, they are directly within the *executive* branch of government. *Id.* at 50. Inherent in the Governor's "direct supervisory authority" over the executive branch is the power to appoint or reappoint executive officers such as these judges. *Id.* Since the *Legislature* chose to place the JCC's within the executive branch as part of the Department of Labor, the constitutional "balance of powers" is met by this system and its

fairness is patent. *Id.* The judicial branch of government, represented by the District Court of Appeal and the Florida Supreme Court, serves as the appellate monitor of the executive branch JCC's. *Id.*

Thus the Petitioner's argument that this system is somehow unconstitutional not only lacks merit, but like his other arguments has nothing to do with the record evidence in support of the decision by JCC Ohlman in his claims. The Petitioner's specious arguments that he is entitled to a Judge who is independent and not serving at the pleasure of the Governor are meritless, and an insult to the integrity of JCC Ohlman and all other Judges of Compensation Claims.

Petitioner's arguments have no relationship to his claims or to the JCC's ultimate decision on the workers' compensation claims. In that context, Respondents respectfully submit that the Petition filed herein should be DENIED.

III. WHETHER § 440.13(5)(e) FLA. STAT. (1994) IS UNCONSTITUTIONAL IN ITS RESTRICTION OF MEDICAL TESTIMONY

In the interest of brevity, Respondents will not repeat but reincorporate as if fully set out herein their prior arguments against Petitioner Gunter's constitutional challenges in this appeal. The attack in Point III on the constitutionality of *Fla. Stat.* 440.13(5)(e) as amended in 1994 is similarly vague and unsupported, and should also fail.

Petitioner Gunter wholly ignores the evidentiary context in which his workers' compensation claims below were denied. Petitioner Gunter and counsel wholly failed to comply with simple procedural requirements in seeking authorization for the psychiatric care of Dr. Cerra. The simple failure to request an IME or medical care from a certain physician, coupled with the failure to present good cause for not having done so, waived any request for alternative care and excluded the testimony of such physician. *Union Camp Corp. v. Hurst*, 696 So. 2d 873 (Fla. 1st DCA 1997).

Surely that does not violate due process or equal protection rights, to simply require a litigant to follow clear and well-known procedural steps. The failure of Petitioner Gunter and counsel to follow the simple rules impeded the legislative intent to facilitate the "prompt and cost-effective delivery of payments." *Id.*

Nothing in Petitioner's arguments on this Point demonstrates any error in the Judge of Compensation Claims' findings of fact and ultimate conclusions in the benefit denial Order. Nor does it demonstrate in any manner the unconstitutionality of *Fla. Stat.* 440.13(5)(e).

In *Rucker v. City of Ocala*, 684 So. 2d 836 (Fla. 1st DCA 1996), that Court held that a Florida claimant's constitutional rights to due process, equal protection and access to Courts are *not* violated by this statute's provisions barring medical testimony from unauthorized physicians. As the Appellate Court specifically stated, the provisions of Chapter 440 allow a claimant to pursue "available

alternative methods" of obtaining medical care and introducing opinions from those experts, by simply following procedural steps. *Id.* at 840.

As long as the Claimant has the right to notice and an opportunity to be heard, his rights to procedural due process are met. *Id.* As long as the classifications created by the workers' comp statutes "rationally advance legitimate governmental objectives," then a Claimant's constitutional rights of equal protection and access to the Courts are met. *Id.* at 843. *See also, Strohm v. Hertz Corp.*, 685 So. 2d 37 (Fla. 1st DCA 1996).

Despite Petitioner Gunter's attempt to fit his arguments on constitutionality into the actual evidence in his case, the arguments fail in their entirety. Simply put, this Claimant failed to follow a simple statutory formula for seeking alternative medical care and insuring that testimony from the alternative health care provider be admissible in a future hearing. Having failed to do so, and having wholly failed to demonstrate the unconstitutionality of the legislative classifications established under the 1994 amendments to *Fla. Stat.* 440.13(5)(e), Petitioner Gunter's argument on this point should be DENIED.

CONCLUSION

For all the reasons stated herein or to be gleaned from a review of the documents in the Appendix to the *Petition for Writ of Certiorari,* Respondents the City of Belleview, Florida Police Department and the Florida League of Cities respectfully submit there is no merit

whatsoever in the constitutional arguments on appeal made by the Petitioners herein.

The Petitioners having wholly failed to demonstrate any error in the Judge of Compensation Claim's ultimate findings of fact and conclusion of law as reflected in the Orders on appeal, and failed to demonstrate any support for the alleged unconstitutionality of certain provisions of Chapter 440, *Florida Statutes* (1994), the *Petition for Certiorari* filed herein should be DENIED.

Respectfully submitted,

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